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December 20, 1994

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554

RE: CC Docket No. 92-166

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Loral/QUALCOMM Partnership, L.P., are an original and eleven copies of its "Consolidated Opposition to and Comments on Petitions for Reconsideration."

Should there be any questions regarding this matter, please communicate with this office.

Respectfully submitted,

William D. Wallace

Enclosure

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	
Rules to Establish Rules and	)	CC Docket No. 92-166
Policies Pertaining to a Mobile	)	
Satellite Service in the 1610-1626.5	)	
MHz and 2483.5-2500 MHz	)	
Frequency Bands	)	
	)	

CONSOLIDATED OPPOSITION TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION

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Dated: December 20, 1994

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SUMMARY

In this consolidated opposition, Loral/QUALCOMM Partnership, L.P. ("LQP") responds to the petitions for reconsideration filed by AMSC Subsidiary Corporation, Constellation Communications, Inc., Motorola Satellite Communications Inc., and TRW Inc. LQP continues to support the general framework established by the Commission for licensing MSS systems in the 1.6/2.4 GHz bands, and opposes proposals which would conflict with or undermine that framework. LQP agrees, however, with certain minor modifications suggested by other parties which would improve the Commission's rules and policies for this service.

LQP opposes the proposals of TRW and Motorola which would effectuate a global band segmentation rule or policy. The Commission has properly rejected a global band segmentation proposal and should for the same reasons reject the TRW and Motorola proposals. TRW's insistence that the Commission attempt to impose its domestic band segmentation plan on other countries in North America would, like a global plan, violate the Commission's rules and policies, circumvent international telecommunications procedures and threaten international comity in the provision of MSS service. Similarly, the proposal of TRW and Motorola to include a sweeping prohibition on non-exclusivity arrangements in Big LEO licenses could have the effect of forcing the Commission's band segmentation plan on other nations. While LQP fully supports the goal of creating and maintaining

competition across the globe among MSS systems, a non-exclusivity restriction must be tailored so that it does not become a de facto global band segmentation plan.

The Commission should once and for all reject AMSC's arguments for licensing GSO systems in the 1.6/2.4 GHz bands. The Commission has thoroughly considered this issue and has correctly determined that the benefits of new and superior LEO technology serve the public interest. AMSC's petition for reconsideration on this issue must be denied because it does nothing more than reargue issues already decided by the Commission.

AMSC's contention that the Commission's two-tiered licensing scheme for Big LEO MSS applicants violates the hearing rights of MSS applicants is also without merit. The Commission's licensing rules are based on the clear public interest in expeditious licensing of financially qualified applicants and are consistent with the principles developed under the Ashbacker decision.

The Commission should also reject TRW's suggestion that Big LEO applicants be permitted to switch from Ka-band to C-band feeder link requests at will, and should recognize that a request to switch to C-band feeder links would be a "major amendment" to a system application. TRW's proposal must be rejected because it conflicts with the Commission's interests in delivering expeditious service to the public, promoting international cooperation, and avoiding unnecessary intersystem interference.

Motorola's proposal for a rule adopting an emissions mask should once again be rejected. Motorola has offered no new facts or arguments justifying such a rule and its petition should be denied on this issue as improperly rearguing matters which the Commission has already decided.

Moreover, the Commission should reconsider its "interim plan." As Motorola and LQP pointed out in their petitions, the plan is based on speculation and, in any event, sends the wrong signal to the Russian Administration and GLONASS receiver manufacturers. To optimize domestic MSS operations, the Commission should not require any protection for GLONASS receivers above 1606 MHz.

LQP agrees with Constellation and Motorola that the Commission should modify its systems replacement rules to take into account the realities of LEO satellite systems. Also, LQP supports Constellation's suggestions concerning modifications to Sections 25.203(j) and (k). Section 25.203(j) should be modified to limit the scope of the rule to space stations operating in the Ka-band, consistent with the proposal of the Negotiated Rulemaking Committee in this proceeding. To minimize confusion, Section 25.203(k) should be revised so that applicants proposing feeder link earth stations have the obligation to address in their applications conformance with the coordination agreements reached under Section 25.278 by the non-GSO MSS system operator.

With regard to various revisions of the rules adopted for the protection of radioastronomy proposed by TRW and Constellation, LQP generally supports the

Commission's Rules. Finally, LQP supports Constellation's proposed revisions to Section 25.213 to clarify the co-primary status of MSS with respect to aeronautical radionavigation services.

Before The
FEDERAL COMMUNICATIONS COMMISSION
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	)	

To: The Commission

CONSOLIDATED OPPOSITION TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429(f) of the Commission's Rules, Loral/QUALCOMM Partnership, L.P. ("LQP"), by its undersigned attorneys, hereby opposes in part, and comments on, the Petition for Reconsideration of AMSC Subsidiary Corporation ("AMSC Petition"), the Petition for Clarification and Partial Reconsideration of Motorola Satellite Communications, Inc. ("Motorola Petition"), the Petition for Partial Reconsideration and Clarification of TRW Inc. ("TRW Petition"), and the Petition for Reconsideration of Constellation Communications, Inc. ("Constellation Petition") concerning the Commission's Report and Order in the above-referenced docket. Report and Order, FCC 94-261 (released Oct. 14, 1994) ("MSS Rules Order").[1]

[1] Public Notice of these petitions was published in the Federal Register on December 5, 1994. 59 Fed. Reg. 62398 (Dec. 5, 1994). Hence, this opposition is

LQP is an applicant to construct GLOBALSTAR, a low-earth orbit, satellite communications system, which would operate in the bands allocated for the Above 1 GHz MSS Service. See Report and Order, 9 FCC Rcd 536 (1994) ("MSS Allocation Order"). LQP has participated throughout this rulemaking as a member of the Negotiated Rulemaking Committee and by filing Comments and Reply Comments. LQP also filed a Petition for Clarification and Partial Reconsideration in this docket on November 21, 1994.

I. THE COMMISSION SHOULD REJECT PROPOSALS FOR ADOPTION OF A GLOBAL BAND SEGMENTATION RULE OR POLICY.

In the MSS Rules Order, the Commission properly rejected a proposal to impose a global band segmentation plan on United States MSS Above 1 GHz licensees. The Commission recognized that there was no justification for adopting such a proposal, and that such a rule would improperly intrude upon the authority of other countries to allocate spectrum and access U.S. MSS systems. MSS Rules Order, at ¶ 213.

Despite the Commission's well-reasoned explanation for rejecting a global band-sharing requirement, TRW nevertheless now advocates extension of the Commission's domestic band segmentation plan to "all of North America." TRW Petition, at 4-5. In addition, both TRW and Motorola advocate a non-exclusion policy which could have the effect of imposing the Commission's band

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timely filed in accordance with Section 1.429.

segmentation plan on other countries. See TRW Petition, at 21-23; Motorola Petition, at 16-18. For the same reasons the Commission has already rejected a global band segmentation rule, both of these proposals must also be rejected. Such rules invade the sovereign rights of other nations to allocate spectrum for and to authorize operation of satellite systems and would thus be contrary to U.S. policy and interests as well as established international telecommunications procedures. See, e.g., Preamble to Int'l Telecommunication Convention, (Nairobi 1982); Preamble to Constitution of the Int'l Telecommunication Union (Geneva 1992).

A. The Commission Should Reject TRW's Proposal for Extraterritorial Extension of the Band Segmentation Plan.

Although it has abandoned an express global band segmentation plan, TRW now suggests that the Commission "specifically commit to undertake coordination efforts to extend the U.S. spectrum sharing plan throughout North America." TRW Petition, at 5. Like the global plan, this proposal to force adoption of the Commission's spectrum plan for the 1.6/2.4 GHz bands in the countries of North America is without merit.

First, TRW's proposal wrongly assumes that coordination of the MSS systems in adjacent countries would be difficult to achieve without extending the Commission's band segmentation plan. As the Commission is aware, CDMA systems can operate co-frequency in the same geographic coverage area by agreeing on a few operational parameters, and so, band segmentation is not

required to coordinate multiple CDMA systems in adjacent countries. See LQP Reply Comments, at 72. There may be coordination techniques, for example, beam management, which would allow a CDMA system to operate co-frequency with a TDMA system in an adjacent region. TRW's proposal would eliminate use of such techniques, thereby eliminating potential efficiencies in using scarce MSS spectrum which could be achieved through the coordination process. Not only is TRW's "hemispheric" band segmentation proposal unnecessary, it also promotes an inefficient use of the available spectrum resources.

Moreover, Resolution 46, adopted at the 1992 World Administrative Radio Conference (WARC '92), already sets forth a procedure for coordination of LEO MSS systems. TRW's proposal is unwarranted given Resolution 46 and the Commission's commitment to "work with the global community to promote mobile satellite services through the development of sharing techniques and the exploration of other technical issues." MSS Rules Order, at ¶ 211.

To the extent TRW advocates a commitment beyond this procedure, its proposal runs afoul of the sound public policy reasons for respecting the jurisdiction of foreign administrations over international MSS systems operating within their territories.[2] The Commission has repeatedly stated that "all decisions relating to the implementation of 1.6/2.4 GHz mobile-satellite service within a country's territory will remain solely within that country's jurisdiction and

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[2] The Commission recently refused to impose a global band sharing plan on the first Little LEO licensee. Orbital Communications Corporation, FCC 94-268, at 7 (released Oct. 27, 1994).

control." Notice of Proposed Rulemaking, 9 FCC Rcd 1094, 1140 (1994) ("MSS NPRM"); see MSS Rules Order, at ¶ 314. As LQP has already explained in this proceeding, any infringement on this basic tenet of international telecommunications policy would not only be contrary to Commission policy, but is likely to create controversy and pose a serious threat to the leadership role of the United States in the international MSS community. See LQP Reply Comments, at 27-29; LQP's Letter to William F. Caton, at 2-3 (Sept. 13, 1994). Importantly, TRW fails to address, let alone rebut, the concerns of the Commission which led it to refuse to intrude on foreign jurisdictions. Because it is unnecessary and contrary to U.S. policy, TRW's proposal must be rejected.

B. The Commission Should Also Reject Non-Exclusivity Agreements Which Have the Effect of Global Band-Segmentation Plans.

Both TRW and Motorola request that the Commission adopt a rule prohibiting U.S. LEO MSS licensees from "soliciting or entering into any arrangements with foreign Administrations that would exclude other U.S. MSS licensees." Motorola Petition, at 18; see TRW Petition, at 21. While LQP agrees that monopolistic agreements with foreign countries should be discouraged, the proposals of TRW and Motorola go considerably beyond this goal to the point of constituting a de facto global band segmentation requirement.

LQP does not object to a license condition prohibiting contracts or other arrangements that expressly preclude authorizations for more than one U.S. MSS licensee to provide MSS to a particular country. Arrangements which expressly

preclude agreements with multiple MSS providers would be contrary to U.S. policy, which seeks to establish and maintain a level playing field for all MSS systems, "including non-discriminatory access to national markets for all mobile satellite communications networks, subject to spectrum coordination and availability." See Letter from Ambassador Vonya B. McCann to Mr. Ronald J. Mario, at App. (dated Nov. 18, 1994).

However, the rule proposed by TRW and Motorola is significantly broader because it ignores the key phrase "subject to spectrum coordination and availability." TRW and Motorola seek a rule that would flatly prohibit all "arrangements that would exclude other 1.6/2.4 GHz systems from providing service in foreign countries." TRW Petition, at 21; see Motorola Petition, at 18. Under this formulation, a U.S. MSS licensee could be prohibited from accepting an operating license from a foreign Administration simply because that Administration adopted a spectrum allocation plan for the 1.6/2.4 GHz bands which was not consistent with the Commission's band segmentation plan in providing access for up to four CDMA systems and one TDMA system.

The broad prohibition articulated by Motorola and TRW could become the functional equivalent of a U.S. global band segmentation plan. Accordingly, this proposal must be rejected for the reasons already set forth extensively by the Commission and LQP in this proceeding. See § I(A) supra; MSS Rules Order, at ¶¶ 211-213; MSS NPRM, 9 FCC Rcd at 1111 n.63, 1140; LQP Reply Comments, at

27-29; LQP's Letter to William F. Caton, at 2-3 (Sept. 13, 1994). The Commission has clearly and correctly stated that

> decisions relating to the implementation of Big LEO service within a country's territory will remain within that country's jurisdiction and control. . . . [W]e do not believe it is appropriate for the United States to impose global band sharing restrictions that directly impact the ability of other countries to access these systems as they see fit, absent indications from these countries regarding their planned use of the frequency bands.

MSS Rules Order, at ¶¶ 211-213. These principles hold true whether a global band segmentation requirement is explicit or whether it is inherent in a broadly written prohibition against all "arrangements with foreign administrations that would exclude other U.S. MSS licensees." Motorola Petition, at 18.

The cases cited by Motorola and TRW do not support the broad rule they advocate. Most of those cited by Motorola concern wireline services. See Optel Communications, Inc., 8 FCC Rcd 2267 (1993); American Telephone and Telegraph Co., 7 FCC Rcd 130 (1991); Transgulf Communications Ltd., Inc., 6 FCC Rcd 2335 (1991).[3] Thus, these cases did not consider the impact of non-exclusivity conditions on another Administration's right to adopt its own spectrum allocation plan.

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[3] One of the cases cited by TRW is concerned with regulation of international common carriers with foreign affiliates. See Regulation of International Common Carrier Services, 7 FCC Rcd 7331 (1992). Of course, none of the Big LEO systems proposes to operate as a common carrier. Moreover, TRW has not demonstrated how the policy concern in that decision of protecting U.S. common carriers' access to foreign markets for service to and from the United States is implicated by another nation's sovereign right to allocate spectrum and grant authorizations for global MSS systems, which may be used to bolster a country's internal telecommunications infrastructure.

Moreover, the majority of the cases cited by Motorola and TRW, including Orion Satellite Corp., 5 FCC Rcd 4973 (1990),[4] only concern non-exclusivity conditions for authorizations related to service between the United States and a foreign country, and as such, the restrictions placed on Orion, Optel, AT&T and Transgulf in the cited cases are inapposite in this proceeding. GLOBALSTAR and the other LEO MSS systems are global MSS systems, of which a relatively small percentage of calls will involve a United States terminus point. Indeed, given that GLOBALSTAR's business plan focuses primarily on markets with no cellular telephone service or no telephone service at all, most calls are likely to be initiated and terminated outside the United States, and many would be initiated and terminated within a single foreign country.

It is anticipated that one of GLOBALSTAR's primary markets would be lesser developed nations which desire "an 'instant' global and national telecommunications infrastructure." See MSS Rules Order, at ¶ 3. The Commission obviously cannot determine what the telecommunications needs and policies are in all those countries which may grant landing rights to U.S. MSS

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[4] In Orion, the Commission licensed a separate international satellite system to provide service between the United States and countries in Western Europe and Africa, and precluded it from acquiring any right for handling traffic to and from the United States which was denied to another United States company. 5 FCC Rcd at 4942. There was no issue in that licensing proceeding concerning how foreign countries would allocate and/or assign the Ka-band spectrum to be used by Orion.

systems.[5] Accordingly, the Commission should not use a policy designed to foster a competitive marketplace for United States companies to impose arbitrary restrictions on foreign Administrations who may have different telecommunications needs and policy goals. In sum, because the broad non-exclusivity rule proposed by TRW and Motorola is contrary to the Commission's policies against adopting a global band segmentation plan and is unsupported by Commission precedent, it must be rejected.

II. THE COMMISSION SHOULD REAFFIRM ITS RULE ADOPTING LEO DESIGN REQUIREMENTS FOR SYSTEMS OPERATING IN THE 1.6/2.4 GHZ BANDS.

The Commission must once again reject AMSC's arguments for licensing GSO systems in the 1.6/2.4 GHz bands. AMSC's Petition simply rehashes issues which have already been the subject of considerable discussion and thorough consideration by the Commission. See MSS Rules Order, at ¶¶ 12-19; see, e.g., LQP Comments, at 11-19; LQP Reply Comments, at 38-44.

AMSC's contentions concerning the novelty of LEO satellite technology, global coverage capability, and the ability to serve handheld transceivers are all repetitive. These issues were considered and addressed by the Commission. See MSS Rules Order, at ¶¶ 16, 17 and 19. Moreover, the Commission has already

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[5] See Orbital Communications Corporation, FCC 94-268, at 7 (released Oct. 27, 1994) ("we do not believe it is appropriate for the United States to impose global bandsharing restrictions, which will directly impact the ability of other countries to access these LEO systems, absent indications from these countries regarding their planned use of these frequency bands").

made the determination that licensing only LEO systems in the 1.6/2.4 GHZ bands is worth the risks and costs in pursuing a new and superior technology. AMSC offers no new arguments to counter that decision.

As mere repetitive argument, AMSC's petition on this issue must be denied because "reconsideration will not be granted to debate matters upon which [the Commission] has already deliberated and spoken." See Miami Latino Broadcasting Corp., 68 RR 2d 1088, 1089 (1990); see also American Int'l Development, Inc., 50 RR 2d 370, 371 (1981); The President & Directors of Georgetown College, 50 RR 2d 366, 367 (1981). "The public interest in expeditious resolution of Commission proceedings is done a disservice if the Commission readdresses arguments and issues it had already considered." Policies Regarding Detrimental Effects of Proposed New Stations on Existing Stations, 66 RR 2d 19, ¶ 7 (1989). Accordingly, AMSC's Petition regarding the LEO design requirement for MSS Above 1 GHz must be denied.

III. THE COMMISSION'S LICENSING RULES FOR LEO MSS ARE CONSISTENT WITH THE *ASHBACKER* DOCTRINE.

AMSC suggests that the Commission's two-tiered approach to processing the six pending Big LEO applications violates the administrative hearing requirements outlined in Ashbacker Radio Co. v. FCC, 326 U.S. 327 (1945). According to AMSC, "[s]ince all applicants met the initial June 1991 cut-off together, they must be licensed or dismissed together." AMSC Petition, at 14. This statement does not reflect the applicable standard. An examination of the

Ashbacker cases as applied to the Commission's financial qualification rule in this proceeding demonstrates that AMSC's argument is meritless.

In the MSS Rules Order, the Commission decided that a strict financial standard is necessary to prevent unqualified Big LEO permittees from wasting "scarce spectrum resources while preventing other qualified entities from providing service to the public." MSS Rules Order, at ¶ 28; see also id., at ¶¶ 26 and 30. In addition, "consistent with [the Commission's] paramount objective of securing early implementation of these satellite services," it required applicants to make their financial showings by November 16, 1994 in order for their applications to be processed on an expedited basis by the Commission's target date of January 31, 1995. Id., at ¶ 39. However, "in an effort to afford an additional opportunity for entry by such applicants," which had invested time, effort and resources in pursuing licenses to provide Big LEO service, the Commission also provided for a deferred financial showing for a processing group in January 1996. Id., at ¶ 41.

In adopting this two-tiered eligibility rule, the Commission made it clear that any applicants who deferred their financial showing would be accorded priority over new applicants, but they would "not be accorded the same processing priority as those applicants" who met the November 16, 1994 cut-off date. Id., at ¶ 41. This is consistent with the Commission's "paramount objective" of expediting Big LEO service. All applicants were thus on notice that choosing to

defer the financial showing would place them in a less preferred position with respect to those applicants who met the November 16, 1994 deadline.

It has long been established that the Ashbacker requirement of a comparative hearing for mutually exclusive applicants in the same processing group does not apply to applicants who fail to meet an eligibility requirement established by the Commission by rule. United States v. Storer Broadcasting Co., 351 U.S. 192 (1956); Hispanic Information & Telecommunications Network v. FCC, 865 F.2d 1289 (D.C. Cir. 1989). For example, in Hispanic Information the Commission determined, after mutually exclusive applications were filed for ITFS licenses, that local applicants would be automatically preferred to non-local applicants. This rule was based on the Commission's policy finding that local licensees would provide better service consistent with the public interest. Because the Commission had adopted a substantive rule to prefer local applicants, and had given all non-local applicants an opportunity to amend their applications to meet the new criterion, no hearing was required prior to dismissal of a non-local party's application. Hispanic Information, 865 F.2d at 1294-95.

Similarly, in this case, the Commission has made a policy determination that the public interest would be best served by expeditiously licensing those applicants who are now able to meet a stringent financial qualification standard. MSS Rules Order, at ¶¶ 39-41. As in Hispanic Information, the Commission has not by fiat denied the applications of entities which defer their financial showing; rather, it has established an eligibility standard based on well-considered policy

goals, and has provided all pending applicants with an opportunity to amend their applications to meet the new criterion. The fact that the eligibility requirement may make it more difficult for some applicants to obtain licenses does not violate their hearing rights; rather, it is a legitimate exercise of the Commission's "rulemaking authority necessary for the orderly conduct of its business." Storer, 351 U.S. at 202; Hispanic Information, 865 F.2d at 1294-95.

Furthermore, AMSC's argument lacks a basis in logic. As in Hispanic Information, the Commission could have chosen to adopt a rule which would require dismissal of any applicant who did not meet the financial showing by November 16, 1994. Yet, AMSC contends that because the Commission granted a reprieve to those applicants who would otherwise be dismissed, it somehow unlawfully "discriminated" against those parties by failing to provide "simultaneous selection proceedings." See AMSC Petition, at 13-14. If the Commission could have adopted a rule which required dismissal of MSS applicants which did not establish their financial qualifications on November 16, 1994 -- and AMSC does not argue to the contrary -- then it can also adopt a rule which provides a preference to applicants which meet the early filing date. The Commission has not violated AMSC's hearing rights by offering it the opportunity to defer its financial showing until January 1996; rather, AMSC has lost only that processing priority which it voluntarily gave up in order to obtain more time to submit a financial showing. Accordingly, its Ashbacker argument must be rejected.

IV. THE COMMISSION SHOULD REJECT TRW'S PROPOSAL TO MODIFY ITS FEEDERLINK REQUESTS.

In the MSS Rules Order, the Commission recognized that it may be necessary to assign feeder links for all licensed MSS Above 1 GHz systems in Ka-band. MSS Rules Order, at ¶ 169. However, it also recognized that certain applicants had requested feeder links in C-band, and that the Commission was pursuing international allocations to meet these requests. Id., at ¶ 166. LQP urges the Commission to continue to follow this policy of holding Ka-band available as a fallback for MSS Above 1 GHz licensees which have requested C-band feeder links. However, the Commission must reject TRW's suggestion that all applicants should be able to obtain C-band assignments, if such spectrum becomes available for MSS feeder links. See TRW Petition, at 16.

In their November 16, 1994, conforming amendments, the six Big LEO applicants filed specific requests for feeder link frequencies:

Applicant	Feeder Uplink	Feeder Downlink
AMSC	28.4-28.6 GHz	18.6-18.8 GHz
Constellation	5050-5250 MHz	6825-7025 MHz
Loral/QUALCOMM	5025-5225 MHz	6875-7075 MHz
MCHI	15.4-15.7 GHz	6725-7025 MHz
Motorola	29.1-29-3 GHz	19.4-19.6 GHz
TRW	29.7-30.0 GHz	19.8-20.1 GHz

As the Commission is well aware, Motorola and TRW have consistently sought to use feeder links in Ka-band, from the time their initial applications were filed,

through two negotiated rulemaking committees (MSS Above 1 GHz; LMDS at 27.5-29.5 GHz), until filing their amendments on November 16, 1994. Constellation, LQP and MCHI have been actively participating in U.S. and international efforts to achieve allocations for C-band MSS feeder links for use both globally and in the United States.

In its Petition (at 16), TRW suggests that it should be permitted to switch feeder link frequencies at will and apply for feeder link spectrum below 15 GHz if and when it becomes available. LQP opposes this suggestion.

First, the Negotiated Rulemaking Committee pointed out that if bands below 15 GHz were not made available for MSS feeder links, those applicants seeking to use C-band feeder links would be required to make substantial system design and service concept modifications. See MSS Above 1 GHz Negotiated Rulemaking Committee Report, at § 4.3 (April 6, 1994). Substantial costs would arise from such modifications because of the major differences between a system based on C-band feeder links and a system based on Ka-band feeder links. A policy of allowing all pending Big LEO applicants to switch voluntarily back and forth between C-band and Ka-band, depending on what is available, could jeopardize the Commission's primary goal in this proceeding of expediting construction and launch of Big LEO systems and MSS service to the public. See Report and Order, ¶¶ 2, 39.

Second, limiting requests for C-band feeder links among the Big LEO applicants is important because of the potential issues which may arise in the

international community as a result of increasing the number of U.S. LEO systems which would share C-band feeder links. As the Commission is aware, the recent ITU-R meetings in Geneva indicated that there would be a limited amount of C-band spectrum for MSS feeder links. For the United States to take the position now that all U.S. applicants in the current processing group would have access to C-band feeder links could cause concern in the international community over the United States monopolization of the available spectrum.

Moreover, increasing the number of systems using C-band feeder links would necessarily increase the potential for interference between systems. The only feeder link frequencies which would require sharing based on the current U.S. system requests are in C-band: two applicants have requested uplink assignments in the 5 GHz band and three have requested downlink assignments in the 6/7 GHz band. ITU-R Task Group TG 4/5 is currently evaluating this scenario, and has recognized a number of mitigation techniques which are likely to reduce the frequency and duration of interference events if multiple LEO MSS systems use the bands. However, although TG 4/5 concluded that sharing of feeder link spectrum by two systems was feasible through the use of mitigation techniques, sharing by more than two systems would necessitate excessive use of mitigation techniques and requires further study.[6]

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[6] See Document TG 4-5/SUM/___, December 5, 1994 and Document TG 4-5/TEMP/33, at 11.

Section 25.116(b) of the Commission's Rules identifies a "major amendment" to a satellite system application as an amendment which "increases the potential for interference, or changes the proposed frequency or orbital locations to be used." 47 C.F.R. § 25.116(b)(1). While the Commission has recognized that all MSS Above 1 GHz systems may be required to use Ka-band feeder links if sufficient spectrum below 15 Ghz is not available, it has not stated that all Big LEO systems would be able to switch freely to C-band spectrum assignments. Based on analyses which have been performed in the Negotiated Rulemaking Committee and in ITU-R study groups, the Commission should recognize that a request to switch to C-band feeder links would be a "major amendment" pursuant to Section 25.116.

V. MOTOROLA'S PROPOSAL FOR A RULE ADOPTING AN EMISSIONS MASK SHOULD BE REJECTED -- AGAIN.

The Commission properly decided that it was unnecessary for it to adopt a rule providing for an emissions mask between the CDMA and TDMA band segments, which would be designed primarily to protect Motorola's proposed secondary downlink. MSS Rules Order, at ¶¶ 62-63. As the Commission recognized, "secondary services cannot, as a general matter, claim interference protection from harmful interference from stations of a primary service." Id., at ¶ 62 (footnote omitted).

Motorola has requested reconsideration of this issue but has offered no new facts or argument justifying such a rule. See Motorola Petition, at 15-16.

Accordingly, Motorola's Petition on this issue should be denied because "reconsideration will not be granted to debate matters upon which [the Commission] has already deliberated and spoken." See Miami Latino Broadcasting Corp., 68 RR 2d 1088, 1089 (1990); see also American Int'l Development, Inc., 50 RR 2d 370, 371 (1981); The President & Directors of Georgetown College, 50 RR 2d 366, 367 (1981).

VI. THE COMMISSION SHOULD MODIFY ITS RULE ON FILING REPLACEMENT SYSTEM APPLICATIONS.

Like LQP, both Motorola and Constellation pointed out that the Commission's new Section 25.120(e) did not take into account the realities of LEO satellite systems and the potential need for launching replacement constellations before the 10-year license term has expired and, perhaps, before the seventh year replacement application filing window. See LQP Petition, at 19-22; Motorola Petition, at 18-19; Constellation Petition, at 7-9. LQP agrees with Constellation that Section 25.120(e) should be modified to permit filing a replacement system application if such application is required to be filed by a cut-off date in response to either a new or renewal application with which it is potentially mutually-exclusive. LQP also agrees with Motorola that the Commission should permit licensees to file for replacement systems when dictated by the useful lifespans of their systems.